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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Solicitation of Public Comment for Project-Specific Build America, Buy America
Nonavailability Waiver Proposal**

**SUBJECT: Under Evaluation: Project-Specific Public Interest Waiver of Build America
Buy America Act (BABA) Requirements for the Maine School
Administrative District 54 Margaret Chase Smith Community School and
Early Childhood Center**

Introduction

This solicitation of public comment by the U.S. Department of Housing and Urban Development (HUD) is to evaluate a BABA waiver request submitted by an assistance recipient because requiring a previously planned project to comply with BABA requirements would be inconsistent with the public interest.

This solicitation of public comment does not represent a final agency decision. The purpose of this proposal is to inquire whether other factors should be considered in the evaluation of a waiver.

HUD has determined that applying the Buy America Preference to this project would be inconsistent with the public interest. Through this public comment period, commenters may provide information that indicates a waiver may not be needed.

Solicitation of Public Comment

The proposed waiver will be posted on HUD's public facing webpage and a notice of the proposed waiver will also be posted to the Made in America website, to satisfy the requirement to publish any BABA project waiver and provide the public with fifteen (15) days to submit comments. HUD is seeking public comment from all interested parties. Public comments on this waiver should be submitted to BuildAmericaBuyAmerica@hud.gov. Please reference "BABA Waiver for Maine School Administrative District 54" in the subject line.

Background

The Buy America Preference set forth in section 70914 of BABA included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58), requires that all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), HUD may waive the application of the Buy America Preference (BAP), in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or the inclusion of iron, steel, manufactured products, or construction materials produced in the United States would increase the cost of the overall project by more than

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twenty-five (25) percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) days for public comment on the waiver; and be submitted to the Office of Management and Budget's (OMB) Made in America Office for review to determine if the waiver is consistent with policy.

Summary

Proposed Waiver: HUD is soliciting comments regarding whether to issue a waiver of the requirements of section 70914 of BABA included in the IIJA, for the Community Project Funding (CPF) grant awarded to the Maine School Administrative District 54 (MSAD 54) for the Margaret Chase Smith Community School and Early Childhood Center.

Waiver Type: Award-Level Public Interest Waiver

Waiver Level and Scope: Award-level waiver for an award that funds a single project. No other award or project will utilize the waiver.

Proposed Waiver Description: Award-level waiver of BABA requirements for a project that was planned and contracted prior to the award of funding subject to BABA.

Project Summary: The project is located in Skowhegan, Maine. The project consists of the construction of a new school and early childhood center.

Length of the Waiver: From the effective date of the final waiver until September 30, 2026.

Items Covered in Waiver: Not applicable because the waiver will be applied at the award level, not to specific products.

Justification for Public Interest Waiver

HUD seeks a public interest waiver of the BAP as applied to CPF grant B-24-CP-ME-1061, awarded to MSAD 54 for the previously planned Margaret Smith Chase Community School and Early Childhood Center located in Skowhegan, Maine. CPF grants, also known as "Congressionally Directed Spending," are awarded to specific projects identified by members of Congress via annual appropriations bills. The Grantee was awarded \$1,941,000.00 for the project in the Consolidated Appropriations Act, 2024 (P.L. 118-42, approved March 9, 2024). Fiscal Year 2024 (FY24) CPF grants are subject to the BAP for iron and steel products only, as determined by HUD's "Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" ("HUD Phased Implementation Waiver").

The Grantee began planning the project in 2017, when it applied for a Maine state-subsidized school construction project. The concept was approved by the Maine State Board of Education, and a maximum project budget was established on May 11, 2022, prior to the effective date of the BABA. As a result, the project budget did not account for BABA compliance, which was not the law at the time of the project approval. Under Maine state law, the Project budget may not exceed the budget set forth in the concept approval (05-071 C.M.R. ch. 61, § 6(2)(B)).

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The project was competitively bid, and the construction contract was executed on June 14, 2023. At this point, the Grantee had not been notified that it would potentially receive a CPF grant award. On July 20, 2023, the Grantee was notified that the CPF award had been included in the FY2024 appropriations bill, which was enacted on March 9, 2024. In April 2025, the grant agreement was executed between HUD and the Grantee. On June 15, 2025, the school construction building was substantially completed. Since the Grantee was awarded the CPF grant funding, no additional iron or steel products have been procured. The Grantee has not expended any funds from the CPF grant, which will be used to reimburse local funds.

Throughout the planning and procurement phases of the project, the Grantee had no reasonable expectation that BABA compliance would be required. There is no other Federal funding in this project that would have triggered BABA compliance prior to the CPF award. Other funding sources include support from the State of Maine and local funding, including \$2,499,572.00 raised through local fundraising efforts.

If BABA compliance were now required due to the addition of CPF funding to the project, the Grantee would be obligated to remove, reorder, and replace \$3,016,310.00 in foreign-produced steel that has already been procured using non-Federal funding sources and incorporated into the project. This would exceed the legal budget cap set by the State and would be infeasible since the building has already completed construction and been issued a Certificate of Occupancy. Partial demolition and reconstruction of the building would displace students and incur costs that MSAD 54 is not legally allowed to incur. Accordingly, HUD has determined that requiring such corrective actions would be unreasonable and contrary to the public interest.

Therefore, HUD has determined that it is in the public interest to grant a waiver of the BAP as applied to the Grantee's CPF award. This waiver would relieve the Grantee of BAP compliance obligations due to the addition of CPF funding to the project. The Grantee has not expended any funding from the CPF grant and this waiver is not to be retroactively applied to any previously expended funds.

Anticipated Impact if No Waiver is Issued

Should a waiver not be granted, the Grantee would be unable to accept the Congressionally appropriated CPF grant and would need to seek alternative local funding to fill the gap. This would impose a significant burden on the school district and the communities it serves, which face significant resource constraints and high levels of poverty. In FY2023, 64.46% of students in the district qualified for free or reduced lunch. Additionally, this would prevent the grant from being spent for its Congressionally appropriated purpose.

Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB M-24-02, agencies are expected to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products"

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as appropriate before granting a public interest waiver. HUD has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

Description of Award

Agency: United States Department of Housing and Urban Development (HUD)

Common Governmentwide Accounting Classification (CGAC) Code: 086

Title of Project: Margaret Chase Smith School and Early Childhood Center

Recipient Name: Maine School Administrative District 54

Unique Entity Identifier (UEI): N2HUXDJDMBD4

Federal Award Identification Number (FAIN): B-24-CP-ME-1061

Financial Assistance Listing Name: Economic Development Initiative, Community Project Funding, and Miscellaneous grants

Assistance Listing Number: 14.251

Federal Financial Assistance Funding Amount: \$1,941,000.00

Total Estimated Infrastructure Expenditures: \$58,168,931.00